

HAILEY, FRIDAY, OCTOBER 10, 2008, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34568

RODNEY PETERSON, an individual,)
)
Plaintiff-Appellant-Cross Respondent,)
)
v.)
)
WILLIAM R. SHORE and ROBERTA S. SHORE,)
)
Defendants-Respondents-Cross)
Appellants.)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Franklin County. Hon. Don L. Harding, District Judge.

Atkin Law Offices, PC, Bountiful, Utah, for appellant-cross respondent.

Merrill & Merrill, Pocatello, for respondent-cross appellants.

Rodney Peterson relocated his business from his home to property owned by William R. Shore and Roberta S. Shore. The parties orally agreed that Peterson would pay monthly rent and that Peterson could purchase the property from the Shores at some point in the future. Peterson later attempted to exercise his claimed right to purchase the property through another business entity. He gave the Shores written notification of his intention along with a check for \$500 in earnest money. Other than Peterson's assurances, no other money was tendered. The Shores were negotiating with Peterson's former business partners regarding the property and refused to honor the oral agreement that Peterson alleged.

Peterson instituted this action to enforce the purchase agreement. The Shores moved to dismiss, and Peterson moved for summary judgment. The district court denied both motions and then granted summary judgment to the Shores because the oral agreement was unenforceable under the statute of frauds. The Shores filed a motion for costs and attorney fees, which the district court denied. Peterson appeals challenging the district court's order denying his motion for summary judgment and granting summary judgment to the Shores. The Shores cross-appeal challenging the district court's order denying their motion for costs and attorney fees.

HAILEY, FRIDAY, OCTOBER 10, 2008, AT 10:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33607

ROBERT J. CARLSON,)
)
Plaintiff-Appellant,)
)
v.)
)
BRANDON M. STANGER; PAUL)
STANGER and JANE DOE STANGER,)
)
Defendants-Respondents.)

Appeal from the District Court of the Sixth Judicial District, State of Idaho,
Bannock County. Hon. Peter D. McDermott, District Judge.

M. Brent Morgan, Chtd., Pocatello, for appellant.

Robert C. Montgomery, Boise, for respondent.

On June 7, 2002, Robert Carlson and Brandon Stanger were involved in a car accident at an uncontrolled intersection in Pocatello. Stanger was ticketed for failing to yield the right of way, pled guilty, and was assessed a fine.

In May 2004, Carlson filed a complaint alleging that Stanger's negligence proximately caused the accident and physical injuries to Carlson's neck, back, shoulders, and legs. Stanger filed an answer asserting the defense of comparative negligence and requesting a jury trial. A three-day jury trial was held in April 2006.

At trial, three doctors testified--Carlson's treating physician and two other doctors called by Stanger. All three experts agreed that Carlson suffered from a pre-existing degenerative disease in his back and neck, but they disagreed as to what injuries or exacerbation of those pre-existing conditions were caused by the accident.

During trial, Carlson moved for a directed verdict on the issue of negligence contending that the evidence demonstrated Stanger's negligence was 100 percent responsible for the accident. The district court denied Carlson's motion. The jury returned a verdict for Carlson in the amount of \$13,349. However, the jury also found Carlson's negligence contributed to the accident by 30 percent and, therefore, his total award was reduced to \$9,344.30.

Carlson filed motions for entry of judgment notwithstanding the verdict and an additur or, in the alternative, a new trial. The district court denied these motions. The district court determined that Stanger was the prevailing party and he was awarded costs. Carlson appeals, challenging the district court's order denying his motions for a directed verdict; judgment

notwithstanding the verdict; additur or, in the alternative, new trial; and the court's order awarding costs to Stanger as the prevailing party. Carlson also argues he is entitled to attorney fees for this appeal.